



Task Force to Study Maryland's Criminal Gang Statutes Meeting Minutes

Amoss Hearing Room

4th Floor of the Miller Senate Office Building, Annapolis, Maryland

Wednesday, March 6, 2019, 3:00 p.m.

Members in Attendance: Senator Michael Hough, Maryland Senate; Delegate Wanika Fisher, Maryland House of Delegates; Delegate Jesse Pippy, Maryland House of Delegates; Lt. Colonel David Ruel, Maryland State Police; Michael D. Moore, representative for Bill Sage, Department of Public Safety and Correctional Services; Gavin Patashnick, Department of Juvenile Services; Katie Dorian, Attorney General's Office; Mary Siegfried, Office of the Public Defender; Judge William Tucker, Maryland Judiciary; Carl J. Kotowski, Governor's Office of Crime Control and Prevention; Michael Yeagy, Maryland Retailers Association; Toni Holness, American Civil Liberties Union; Anthony McNeil, Farming4Hunger; Nicole Hanson, Out for Justice; and James Trusty, Ifrah Law PLLC.

Members Not in Attendance: Senator William C. Smith, Jr., Maryland Senate; Scott Shellenberger, Baltimore County State's Attorney's Office; and Chief Henry P. Stawinski III, Prince George's County Police Department.

Other Guests in Attendance: Steven Clark, Legislative Aide for Senator Hough; Jeff Zuback, Governor's Office of Crime Control and Prevention; Cierra Rodgers, Governor's Office of Crime Control and Prevention; Andy Baranauskas, Governor's Office of Crime Control and Prevention; Don Hogan, Governor's Office of Crime Control and Prevention; Rachel Kesselman, Governor's Office of Crime Control and Prevention; John McCarthy, Montgomery County State's Attorney's Office; Richard Weiss, Montgomery County State's Attorney's Office; Bernie Fowler, Farming4Hunger; Luke Pinton, Chief of Staff for Senator William C. Smith, Jr.; and more.

Welcome and Introductions

Senator Hough called the meeting to order at 3:06 p.m. He welcomed everyone to the initial *Task Force to Study Maryland's Criminal Gang Statutes* (Task Force) meeting and mentioned that everyone should have a beautiful binder that the Governor's Office of Crime Control and Prevention put together, to include an agenda. Senator Hough mentioned Chapter 145 of 2018 which created the Task Force with specific appointees, and its charge for members to:



1. Study existing State prohibitions on criminal gang-related activity and the efficacy of existing law in being used to obtain criminal convictions against individuals who engage in criminal gang-related activity; and
2. Make recommendations regarding changes to State law to better deter, prosecute, and punish criminal gang-related activity and persons convicted of gang-related offenses.

Senator Hough mentioned that the Task Force must submit their findings and recommendations to the Governor and the General Assembly on or before June 30, 2020. Because of this, he said it would be good to wrap-up the Task Force's findings by the end of December 2019.

Introductions of Task Force Members

Senator Hough invited members to introduce themselves.

Issues with Current State Statutes & Gang Task Force Development

Senator Hough invited Mr. McCarthy and Mr. Mays to present on the State statutes relating to criminal gang-related activity, and its issues which resulted in the development of the Task Force. Mr. McCarthy thanked Senator Hough and mentioned that Mr. Mays was unavailable due to a personal matter and that his colleague, Mr. Weiss, would present in his place.

Mr. McCarthy provided some background information on the bill, and mentioned that he was with the Maryland State's Attorney's Association (MSAA) when the bill was presented in 2007. At that time, it was opposed by all 24 State's Attorney's because they felt it was not helpful based on its provided language, and there was no legislative scheme by which the crimes would have to be proven. Since this time, it has been used approximately 11-12 times in the past 12 years. The statute was barely used - maybe in two trials - because it provided very little guidance.

In reference to regional gang problems in Maryland, Mr. McCarthy said they are vastly different. He mentioned prior discussions on issues in Baltimore City versus those in the Metropolitan Area, and also provided an example in Montgomery County. He indicated that 27 murders had occurred in Montgomery County in one year; however, there were no ties to Baltimore City.

Mr. McCarthy invited his colleague, Mr. Weiss to present to the Task Force. Mr. Weiss informed the Task Force that, based on his experience, he would present on the existing law, current challenges they see while working with police, and suggestions on how to improve the statute. He also mentioned that the binders included the full text of the current statutes, and that the power point presentation captured parts of the statutes.



In reference to § 9-804(a) of the Criminal Law Article, Mr. Weiss mentioned the need to identify that the committed crime was one of the underlying crimes, and that the crime was committed at the direction or in association with the gang (*see slide #3*).

Mr. Weiss indicated that Maryland's definition of a criminal gang, found in § 9-801 of the Criminal Law Article, is similar to the federal definition (*see slide #4*). He believes this is where Maryland's definition originally came from. The remaining definition is the underlying crime, found in § 9-801(g) of the Criminal Law Article (*see slide #6*).

Mr. Weiss said § 9-802, § 9-803, and § 9-805 of the Criminal Law Article are not used often.

Challenges with the Current Law

In reference to challenges, § 9-804 of the Criminal Law Article requires "three trials" to occur in one (*see slides #8 and #9*). Mr. Weiss said it is hard to prove a pattern of criminal gang activity (definition, landscape, changing circumstances). Although most people may think of MS-13 for gangs at a large level, these assumptions may not apply to local gangs. For instance, "One Way Hustle" in Montgomery County caused a lot of issues, to include trafficking handguns, so law enforcement confiscated the guns and tracked the "followers" on Instagram. They also followed the individuals, in partnership with the Montgomery County State's Attorney's Office. Then, all of a sudden, "One Way Hustle" changed their colors, hand signs, and name to "TMK" (*see slide #10*). It is important to note that there is no law to show this shift to connect the two gang names, even though they are the same.

Mr. Weiss mentioned two tricky patterns (*see slide #12*):

- Hybrid gang crimes: members of hybrid gangs do not always work within certain lines
- Varsity and junior varsity: junior varsity (6th - 8th graders) serves as one gang for the "main" gang (varsity); however, junior varsity and varsity often do crimes together as well

In reference to slide #13, Mr. Weiss said the issue with proving prior crime is not what the jury wants to hear. Although the statute makes everyone say it is important and necessary, the jury does not want to hear all the gruesome details. He also mentioned that the relevancy of MS-13 crimes in the past three years should be an element.

At a recent conference, Mr. Weiss asked attendees for their input on items that need to be addressed. They all responded with the "underlying crime concept" (*see slide #14*):

- Financial fraud schemes
- Quality of life issues
- Non-felony illegal possession of firearms



- Inhibits investigation (search warrants)
- Limited to Maryland Crimes? Gang Migration Issues (*see [House Bill 102](#)*)¹

One attendee stated that a man from Montgomery County was deported, then brought back illegally, and later found at the county fair by law enforcement. He was then arrested by law enforcement. Because he was in possession of a cellular phone, and known to be an influential person, law enforcement applied for a warrant to search. Unfortunately, they were denied because they could not articulate the gang nexus for new information to the judge.

Mr. Weiss referenced the highlighted areas on slide #16 which, if changed, would improve the statute. In particular, Mr. Weiss suggested the following changes:

- Add a definition of “gang member” (Montgomery County identified nine items to define a “gang member”) (*see slide #18*).
- Delete the “criminal gang” definition (*see slide #19*).

These changes would serve to create a new robust § 9-804 of the Criminal Law Article, based on the new “gang member” definition, and the removed “criminal gang” definition (*see slide #20*) or the redefined “criminal gang” definition (*see slide #21*), and removed “underlying crime concept” (*see slide #22*).

Mr. Weiss asked the members if they had any questions. Mr. Kotowski asked if you can charge conspiracy under § 9-804 of the Criminal Law Article. In particular, if individuals are in a gang in which it is proven that members conspire with Joe Smith to “pull the trigger,” could the others be charged? Mr. Weiss said yes, that would be a conspiracy charge. He also said that charge is used.

Ms. Holness asked if conspiracy crime is an underlying crime? Mr. Weiss said yes, as defined by § 9-801 of the Criminal Law Article, under patterns of criminal gang activity; however, there is still a need to prove that it happened. Ms. Holness also asked about finance crimes and if there is anything to prove that this is what they are doing? Mr. Weiss said gang members are often charged with these crimes and show the amount of money they receive without having a job.

Mr. Patashnick mentioned charging someone with murder, and asked if it is worth using the gang statute or if a subset of crimes is used for a wider net? Mr. Weiss said the intent of the statute, in theory, is to have a wider net of criminal gangs to include rival gangs, such as MS-13. While it is believed that the statute is for that purpose, there are hurdles that make it challenging. Mr. Patashnick then asked if there is a specific subset of crimes that would make more sense for prosecutors to go after versus the co-conspirators? Mr. Weiss said, for murder, it would be best

¹ It is assumed that House Bill 102 was proposed because gangs move and migrate which may result in in-state crimes and out-of-state convictions. For example, motorcycle gangs move and migrate all over which result in many federal prosecutions; however, some gangs cannot be prosecuted because many crimes occurred in other states.



to get the most amount of time; for second degree assault, that would be maybe 10 years; and for secondary assaults in the community, that may be more cumbersome.

Delegate Fisher inquired about best practices in other states and what would be best for Maryland. She also inquired about a nexus or common theme or brand. Mr. Weiss said it would be best to prove they are a member of the gang, and that they committed the crime. Although a nexus may be beneficial, it all depends on what you are looking for. Delegate Fisher mentioned social media and how it is like a “flat structure” in which people do their own thing within a brand or within a hierarchy structure. She then asked if Mr. Weiss’ cases are flat or pyramid in relation to organizational structure, and how judges respond to the organizational structure? Mr. Weiss said the local gangs do not have organizational structures like MS-13. He also said that judges appear to be fine with organizational structures, and the statute appears to assume structures within the law; however, this is not always the case. Some do not have ranks or sense of hierarchy. Ms. Siegfried said that Mr. Weiss’ perspective is to prove they are gangs; however, another perspective is to identify those who are not gang members, or a gang as it is defined. She then asked if there are data on people of color and those prosecuted, who are not gang members? Mr. Weiss receives cases in which some individuals say they are not a member. When you look at the nine factors proposed by Montgomery County to define a “gang member,” Mr. Weiss said that this validation process is far more accurate than simply saying someone is a gang member.

Delegate Pippy said the first thing that came to his mind is perpetuity. He mentioned that the Pagans were in his district for a while. He also mentioned his interest in finding how individuals are recruited and if individuals are in a “temporary” spot of the activity. For the Pagans, Mr. Weiss said they have a nationally organized level which includes a president, and are very organized and structured, based on what they do. The recruitment methods differ, based on what “side of the street your parents had an apartment.” Mr. Weiss explained that it is not necessary recruitment, instead it is more like a “birthright.” It is important to note that if the gang is organized like MS-13 and Pagans, their structure is different and a statute for this will likely need to be different than any other gang.

Gang Activity & Gang Members

Senator Hough invited Lt. Colonel Ruel to present. Lt. Colonel Ruel indicated that gang activity and gang members have been validated throughout the State, to include street gangs, local gangs, national gangs, etc. He also said that gang names may be based on something unique to them.

In the past, gangs were not known outside of prison. Now, however, there are gangs, such as BGF or DMI, in prison that regroup outside of the prison. Gangs include Aryans, White Supremacists, Bloods (may also be associated with different sets), Crips, Pagans, etc. When you collectively examine the member within these groups, the most dangerous include: Bloods, BGF, MS-13, and some local gangs. No area is immune to criminal gang activity. The core activities



include: CDS, violent crimes (assault, aggravated assault, homicide), and weapons (illegal possession, carrying, use of gun in commission of crime).

Lt. Colonel Ruel indicated that gangs leverage social media to coordinate gang activity. They also use social media to meet and provoke rivals. For example, several rap crews in Baltimore City would insult each other through videos and then fight. He also mentioned that gangs will “call out” snitches or others which creates a lot of turmoil and inner gang violence.

Lt. Colonel Ruel said some of the things that go unnoticed are the motorcycle gangs. For instance, Pagans increased drastically in one year. They started their first overseas chapter this year. Previously, there were five chapters in Maryland which has increased to nine. Although they are not represented in Southern Maryland, they intend to have a chapter in each county at some point. Hells Angels are also starting a new chapter in Baltimore.

Lt. Colonel Ruel indicated that the general goal for gang members is to gain wealth. Because of this, the overall gang activity will continue to increase in the suburbs where there is less rival, compared to the city. Many gang members move to Western Maryland because they do not have to worry about competition, and they can hide a little easier. They will go there, have a large clientele, and then move back and forth. They are in every jurisdiction in Maryland. Gang violence has occurred in 17 of Maryland’s 24 jurisdictions. With regards to statistics, Lt. Colonel Ruel said the total homicide count was 496, of which 14% (n = 70) were gang-related.

Senator Hough asked the members if they had any questions. Ms. Holness said Baltimore City is referenced a lot with regards to gangs. She then asked: how do we handle the police gangs such as the Gun Trace Task Force; do you recommend that we fit them in; should we treat them the same; is there a special condition we should use; how should we handle this? Lt. Colonel Ruel said they should be dealt with the same as we would with any citizen identified as a gang. Mr. Holness then asked if we could classify them as a gang? Lt. Colonel said if they are identifying and conducting as a gang then he would assume the statute to apply.

Mr. Moore indicated that the Department of Public Safety and Correctional Services are experiencing a lot of the things that Lt. Colonel Ruel mentioned in the city. Mr. Moore said BGF, Crips, and Bloods come together to unite with this neighborhood approach; however, they come together to make money through “murder for hire,” etc. He then asked, how he would prosecute them. Senator Hough said this may be best for the Montgomery County State’s Attorney’s Office to answer. Mr. Weiss said the current statute causes a lot of problems for this in which one would have to prove that each element of the gang is committing a gang activity. This is what would be included under the, previously mentioned, hybrid model. Mr. Moore also said that the Department of Public Safety and Correctional Service is discovering that gangs



receive dues, money for contraband in prison. In addition, some gangs monitor police activity because each jurisdiction has a different way to validate (Baltimore City uses a point system).

Senator Hough said that is a great question. He suggested that the Department of Public Safety and Correctional Services present to the Task Force at a later meeting. He also referenced the recruitment of the Department of Public Safety and Correctional Services, and what is happening in the jails, at the State and local jails. Senator Hough would like an entire meeting on this topic.

Delegate Pippy responded to Ms. Holness and said that, while Baltimore City was mentioned, so was Western Maryland. He also said as a public servant, such as a police and correctional officer, they should be treated no differently or worse because they betrayed our trust. He then asked about the finance component and its relation to drug distribution. Lt. Colonel Ruel said yes; however, this could include skimming credit cards, robbery on Craigslist, etc. He said it could be a setup from the beginning and is primarily seen as the drugs. Delegate Pippy said most lawmakers are looking at the drug crisis and the issue with fentanyl.

Mr. Patashnick indicated that there appears to be a distinction between organized crime and gangs. He then asked Lt. Colonel Ruel if there is a relationship between a gang committing an organized crime and organized crime generally. Lt. Colonel Ruel said there are so many different layers of things. For instance, if dealing with MS-13 or Pagans, it is difficult given their organized structure; whereas, for less known gangs - local gangs - they are less structured.

Discussion

Senator Hough said it would be good to wrap-up the Task Force's findings by the end of December 2019, so they may submit their findings and recommendations to the Governor and the General Assembly on or before June 30, 2020. Because this is a regional problem, he would like to meet regionally to hear from law enforcement and others. Senator Hough would like to hold five to six regional meetings at the following locations: Prince George's County, Eastern Shore, Frederick, Baltimore City, Montgomery County, etc. Ms. Siegfried asked if the public defender will be able to present. Senator Hough said yes to the Public Defender at the next meeting, followed by the Department of Public Safety and Correctional Services, etc.

Closing Remarks

The meeting adjourned at 4:35 p.m.